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**HOUSE BILL 195**

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

**INTRODUCED BY**

**Joe M Stell**

**FOR THE WATER AND NATURAL RESOURCE COMMITTEE**

**AN ACT**

**RELATING TO WATER; PROVIDING FOR A STRATEGIC WATER RESERVE;  
PROVIDING FOR ADDITIONAL POWERS AND DUTIES OF THE INTERSTATE  
STREAM COMMISSION; AUTHORIZING THE ISSUANCE OF SEVERANCE TAX  
BONDS FOR THE ACQUISITION OF WATER, WATER RIGHTS AND WATER  
STORAGE FOR THE STRATEGIC WATER RESERVE; MAKING AN  
APPROPRIATION.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. A new section of Chapter 72, Article 14 NMSA  
1978 is enacted to read:**

**"[NEW MATERIAL] INTERSTATE STREAM COMMISSION-- ADDITIONAL  
POWERS-- STRATEGIC WATER RESERVE. --**

**A. The interstate stream commission shall establish  
a strategic water reserve and may purchase or lease from  
willing sellers or lessors or receive through donation surface**

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1 water or water rights or storage rights to compose the reserve.  
2 The commission may also purchase or lease from willing sellers  
3 or lessors or receive by donation underground water or water  
4 rights for the strategic water reserve for cessation of pumping  
5 or limited short-term stream augmentation. At no time shall  
6 the use of water or water rights held by the strategic water  
7 reserve result in an increase in net depletions in any basin.  
8 The commission shall pay no more than the appraised market  
9 value to purchase or lease water or water rights and storage  
10 rights for the strategic water reserve. The commission may  
11 accept money or grants from federal or other governmental  
12 entities or other persons to purchase or lease water or water  
13 rights for the strategic water reserve and to pay  
14 administrative costs. The commission shall not acquire water  
15 or water rights that are served by or owned by an acequia or  
16 community ditch established pursuant to Chapter 73, Articles 2  
17 and 3 NMSA 1978 for inclusion in the strategic water reserve.  
18 The commission shall not acquire water or water rights that are  
19 served by an irrigation district established pursuant to  
20 Chapter 73, Article 10 NMSA 1978, except through contractual  
21 arrangement with the district board of directors or as a  
22 special water users association established pursuant to Chapter  
23 73, Article 10 NMSA 1978, but nothing herein shall be construed  
24 to prohibit or limit the commission's acquisition of water  
25 rights necessary to complete full implementation of the Pecos

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1 river Carlsbad irrigation district settlement. The commission  
2 shall acquire only water rights recognized by the state  
3 engineer to have sufficient seniority and consistent, historic  
4 beneficial use to effectively contribute to the purpose of the  
5 strategic water reserve. The commission shall not acquire  
6 water or water rights for the strategic water reserve by  
7 condemnation. Water in the strategic water reserve shall not  
8 be subject to forfeiture pursuant to Chapter 72 NMSA 1978.  
9 Water or water rights shall only be acquired with the explicit  
10 approval of the commission.

11 B. Water and water rights in the strategic water  
12 reserve shall be used to:

13 (1) assist the state in complying with  
14 interstate stream compacts and court decrees; or

15 (2) assist the state and water users in  
16 complying with the federal Endangered Species Act of 1973 as  
17 part of a collaboratively developed compliance program  
18 involving state and federal agencies and water users or in a  
19 program intended to avoid additional listings of species. Use  
20 of the strategic water reserve pursuant to this paragraph shall  
21 be limited to aquatic or obligate riparian species.

22 C. The interstate stream commission shall develop  
23 river reach or ground water basin priorities for the  
24 acquisition of water or water rights and storage rights for the  
25 strategic water reserve in consultation with the New Mexico

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1 interstate stream compact commissioners, the office of the  
2 state engineer and the attorney general's office. For each  
3 river reach or ground water basin, additional prioritization  
4 shall be developed in coordination with the governing bodies of  
5 the following organizations within the affected river reach or  
6 ground water basin:

- 7 (1) Indian nations, tribes and pueblos;
- 8 (2) boards of county commissioners;
- 9 (3) special districts established pursuant to  
10 Chapter 73 NMSA 1978;
- 11 (4) soil and water conservation districts;
- 12 (5) water authorities; and
- 13 (6) water planning regions.

14 D. The interstate stream commission may sell or  
15 lease water or water rights from the strategic water reserve at  
16 no less than the appraised market value. The commission may  
17 sell water rights only if the rights are no longer necessary  
18 for the purposes for which they were acquired for the reserve;  
19 provided that water rights in the reserve shall not be sold to  
20 the United States. Pursuant to a sale of water rights from the  
21 strategic water reserve by the interstate stream commission,  
22 the commission shall first make the offer of sale for the  
23 original purpose of use. Proceeds of any sale are appropriated  
24 to the office of the state engineer to adjudicate water rights.  
25 Proceeds of any leases are appropriated to the interstate

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1 stream commission for carrying out the purposes of the  
2 strategic water reserve.

3 E. Water or water rights acquired for the strategic  
4 water reserve or water or water rights sold or leased from the  
5 reserve shall remain in their river reach or ground water basin  
6 of origin.

7 F. Transactions with members of an irrigation or  
8 conservancy district established pursuant to Chapter 73 NMSA  
9 1978 shall provide for the strategic water reserve to pay the  
10 annual assessment to the district that would accrue to the  
11 district absent the transaction.

12 G. Cumulative impacts of the strategic water  
13 reserve acquisitions and uses shall not adversely affect  
14 existing water users or delivery systems.

15 H. The interstate stream commission shall adopt  
16 rules consistent with the terms of this section, including  
17 rules to ensure:

18 (1) that water and water rights acquired for  
19 the strategic water reserve are used only for the purposes of  
20 the reserve; and

21 (2) adequate public notice in each affected  
22 area for the acquisition or disposal of water rights.

23 I. The interstate stream commission shall annually  
24 report to the appropriate committee of the legislature on the  
25 status of the strategic water reserve. "

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1           Section 2. A new section of the Severance Tax Bonding Act  
2 is enacted to read:

3           "[NEW MATERIAL] BONDING CAPACITY--AUTHORIZING ISSUANCE OF  
4 SEVERANCE TAX BONDS FOR THE STRATEGIC WATER RESERVE. --

5           A. By January 15 of each year, the board of finance  
6 division of the department of finance and administration shall  
7 estimate the amount of bonding capacity available for severance  
8 tax bonds to be authorized by the legislature. The division  
9 shall authorize three percent of the estimated bonding capacity  
10 each year beginning in fiscal year 2005 and ending in fiscal  
11 year 2025 and the state board of finance shall issue severance  
12 tax bonds in the annually deducted amount for use by the  
13 interstate stream commission for the acquisition and leasing of  
14 water, water rights and storage rights for the strategic water  
15 reserve and its administrative costs.

16           B. The interstate stream commission shall certify  
17 to the state board of finance the need for issuance of bonds  
18 for acquisition of water, water rights and storage rights for  
19 the strategic water reserve. The state board of finance may  
20 issue and sell the bonds in the same manner as other severance  
21 tax bonds in an amount not to exceed the authorized amount  
22 provided for in this section. If necessary, the state board of  
23 finance shall take the appropriate steps to comply with the  
24 federal Internal Revenue Code of 1986. Proceeds from the sale  
25 of the bonds are appropriated to the interstate stream

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1 commission to acquire and lease water, water rights and storage  
2 rights for the strategic water reserve and its administrative  
3 costs.

4 C. Any unexpended balance from proceeds of  
5 severance tax bonds issued for the strategic water reserve  
6 shall revert to the severance tax bonding fund as of the first  
7 day after the end of the tenth fiscal year following the fiscal  
8 year in which the severance tax bonds were issued, after  
9 reserving for unpaid costs and expenses covered by binding  
10 written obligations to third parties. "